

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

RP.No. 691 of 2006(D)

AGAINST THE JUDGEMENT/ORDER IN WPC.12216/2005 Dated 03/03/2006

REVIEW PETITIONER/4TH RESPONDENT

THE CORPORATE MANAGER,
CHALDEAN SYRIAN CHURCH SCHOOLS, THRISSUR.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

RESPONDENTS: WRIT PETITIONER AND RESPONDENTS 1 TO 3

1. PINCY PAUL, W/O. JEEN MOOKEN,
AGED 29 YEARS, MOOKEN HOUSE,
MULANKUNNATH KAVU P.O., THRISSUR, FORMERLY
WORKING AS HSA (MATHS) IN LEAVE VACANCY,
CHALDEAN SYRIAN CHURCH SCHOOL, THRISSUR.
2. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM.
3. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.
4. THE DISTRICT EDUCATIONAL OFFICER,
THRISSUR.

BY ADV. SRI.V.R.KESAVA KAIMAL
GOVERNMENT PLEADER SRI.A.J.VARGHESE.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 02/08/2007, ALONG WITH RP NO. 855 OF 2006 , THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

A.K. Basheer, J.

R.P.Nos. 691 & 855/2006

in

W.P(C) No.12216 of 2005

Dated this the 2nd day of August, 2007.

ORDER

These two Review Petitions have been filed against the judgment in WP.12216/05. While respondent No.4 in the above writ petition (hereinafter referred to as the Corporate Manager) is the petitioner in RP.691/2006, the petitioner in RP.855/2006 is a stranger-third party.

2. The writ petition was filed by Ms.Pincy Paul, respondent No.1 herein, (hereinafter referred to as Writ Petitioner), seeking appointment as High School Assistant (Mathematics) in the school under the corporate agency, claiming the benefit under Rule 51A of Chapter XIV-A KER. It was contended by the writ petitioner that she had worked as High School Assistant (Mathematics) from November 15, 2000 till March 29, 2001 in a leave vacancy in Chaldean Syrian High School, Thrissur under the corporate agency, on the strength of Ext.P1 order of appointment. She further contended that consequent on the promotion of Smt.T.N.Rosly as Headmistress, a vacancy of HSA (Mathematics) had arisen in Chaldean High school in August 2004 and she being a Rule 51A claimant she was entitled to be appointed against the above vacancy.

3. When the above writ petition came up for hearing on March 3, 2006 it was submitted by learned counsel on behalf of the

corporate manager that the since the writ petitioner was a Rule 51A claimant, she would be given appointment in the next arising vacancy of HSA (Mathematics). The writ petition was closed recording the above submission made on behalf of the corporate manager.

4. On June 19, 2006 the writ petitioner filed Contempt of Court Case 747/2006 with a prayer to initiate proceedings against the corporate manger under the Contempt of Courts Act, since according to her, the corporate manager had, in total violation of the undertaking given by him before the court transferred and posted Smt. Bency Mathew from another school under the agency in the retirement vacancy which had arisen in Chaldean Syrian Higher secondary school, Thrissur. Writ petitioner contended that the corporate manager was bound to give the said vacancy in Chaldean school to the petitioner as undertaken by him before this Court. It was further contended by the writ petitioner that the corporate manager was attempting to appoint a fresh hand in Chaldean High School at Chelakkattukara in the vacancy that arose in the school consequent to the transfer of Ms.Bency Mathew to Chaldean school.

5. The corporate manager filed RP.691/2006 about two months after the filing of the contempt of court case referred to above. The other Review Petition by the third party was filed one month thereafter.

6. In his Review Petition it is contended by the corporate manager that the undertaking given by him before this Court in the writ petition should be treated and understood to mean as an offer to give appointment against a sanctioned post. In other words, the

contention is that since no vacancy of HSA (Mathematics) has arisen either in Chaldean Syrian High school or Mar Themotheous High School under his management, there was no violation of the undertaking given by him. It is contended by the manager that there were 3 sanctioned posts of HSA (Mathematics) in Mar Themotheous High School as per the staff fixation order for the academic year 2001-02. Consequent to the introduction of separate cadre for English, the number of sanctioned posts of HSA (Mathematics) in Chaldean school was reduced to two, since the third post was earmarked for English category. In Mar Themotheous School, there was only one post of HSA (Mathematics), since the other post was earmarked for English. It is further contended that in view of the protection to be granted to the existing teachers, two HSAs (Mathematics), one each in the two schools who were in excess to the sanctioned strength under the management, were retained. The other contention raised by the corporate manager is that out of the two excess HSA (Mathematics) one teacher was promoted as Headmistress and the other teacher had retired from service. According to him, now there are 3 existing High School Assistant (Mathematics) working against 3 sanctioned posts and unless a new vacancy of HSA (Mathematics) arises, the writ petitioner would not get appointment. In short, the contention is that he was under the bonafide belief that the writ petitioner could be accommodated against the next arising vacancy in the school. But for the reasons stated above it has now become impossible to give appointment to the petitioner. It is in the above circumstances that he had preferred the Review Petition, it is contended by him.

7. It is pertinent to note that the corporate manager had filed a counter affidavit in the writ petition, in which he had admitted that petitioner was a Rule 51A claimant. Though he had taken up various contentions as regards the availability of vacancy to accommodate the writ petitioner, he had undertaken before the court on March 3, 2006 that he was prepared to give appointment to the writ petitioner in the next arising vacancy in the school. As noticed already, writ petition was closed recording the above submission. Therefore it is not a case where he had given the undertaking before this Court without being aware of the vacancy position or the consequences of his undertaking. He was aware of the subject requirement in the school. Being the corporate manager, it has to be assumed that he would have been aware of the future vacancy which was likely to arise in the school on March 31, 2006 when Smt.Indira Devi, HSA (Mathematics) retired from service.

8. It is also pertinent to note that at the time when the writ petition was disposed of on March 3, 2006, the manager had not raised any of the contentions which he has now attempted to raise either in the review petition or in his counter affidavit in the Contempt of Court Case. He had filed a counter affidavit in the writ petition raising various contentions. A perusal of the contentions raised by the manager in the review petition undoubtedly shows that his attempt is only to create confusion, nothing else. I do not propose to deal with the contentions raised by the manager at length since in my view, they fall outside the purview of the jurisdiction that can be exercised under Order XLVII Rule 1 of the Code of Civil Procedure. I may only refer

to the confession made by the manager himself at the threshold of the review petition. It is seen stated by him that though this petition has been filed for review, it is only intended for seeking a clarification about the undertaking given by him. The contentions raised by the petitioner are apparently outside the scope and ambit of review. Therefore I am not satisfied that the judgment in the writ petition is liable to be reviewed.

9. As regards the other review petition filed by the third party, it may at once be noticed that this review petitioner is none other than the brother of Smt.Bency Mathew, HSA (Mathematics), who was transferred from Mar Themotheous High School to the Chaldean school to fill up the vacancy which had arisen consequent on the retirement of Smt.Indira Devi referred to earlier. But the review petitioner has pretended as though she was totally unaware of either the pendency of the writ petition or the undertaking given by the manager in the said writ petition. According to him he had been working as a Lower Primary School Assistant in the Chaldean school and he came to know about the filing of the writ petition only recently.

10. It is further contended by him that the writ petitioner had suppressed the fact that she had been working as a Lower Primary school Assistant in the school at the time when she was appointed as High School Assistant in a short term leave vacancy with effect from November 19, 2000, on the basis of which she claimed the status of a Rule 51A claimant. It is the case of the review petitioner-third party that the writ petitioner was in fact appointed as Lower Primary school Assistant on June 5, 2000. She was in fact promoted under Rule 43 of

Chapter XIV-A KER to the post of HSA , albeit in a leave vacancy. In short, the contention is that the writ petitioner will not get the benefit of Rule 51 A, since she was promoted as HSA as a Rule 43 claimant. She was later reverted as LPSA on termination of the leave vacancy. According to the Review Petitioner, this aspect was suppressed by the writ petitioner and therefore she could not have claimed appointment against a future vacancy of HSA in the school. Consequently, the Manager could not have given an undertaking before this Court to appoint the writ petitioner against the next arising vacancy of HSA in the school.

11. It is significant to note that the review petitioner admittedly became qualified to be appointed as HSA only in July 2002. But according to him, since he had commenced her service as UPSA in the year 1999 prior to the entry of the writ petitioner in service, he is senior to the writ petitioner and therefore he would be entitled to get appointment as HSA ahead of the writ petitioner. He further claims that he had submitted Annexure I representation before the Manager in this regard in August 2004 claiming promotion under Rule 43. The Manager had, according to the review petitioner, ignored the claim made by him and given the undertaking before this Court that he would appoint the writ petitioner as HSA against the next arising vacancy.

12. In short, the contention of this review petitioner is that he will be prejudicially affected if the Manager gives appointment to the writ petitioner on the basis of the undertaking given by him before this Court.

13. It is contended by the writ petitioner that she had not suppressed any material fact in the writ petition, as alleged. She had only highlighted her claim under Rule 51A of Chapter XIV-A KER which had accrued to her pursuant to her appointment as HSA (Mathematics) in a leave vacancy from November 15, 2000 till March 29, 2001. At that time she was working as UPSA in a leave vacancy. She further submits that prior to her appointment as HSA, and even thereafter, she had been working in short leave vacancies in the schools under the corporate agency. Even after termination of her short tenure as HSA, she was appointed as LPSA in the school at Chelakkottukara. Thus it is contended by her that she was not promoted as HSA under Rule 43 as contended by the Review Petitioner. It is also pointed out that the review petition is the outcome of a collusion between the review petitioner and the Manager. If in fact writ petitioner thought that she was entitled to get the benefit of Rule 43, she would have under normal circumstances approached the Departmental Officer. She had not done so.

14. Having heard learned counsel for the parties and having perused the materials on record, I do not find any error apparent on the face of the record warranting review of the judgment at the instance of the review petitioner. The writ petition was disposed of on the basis of the undertaking given by the corporate manager. As noticed already, the corporate manager was very well aware of the nature of the claim made by the writ petitioner. He had adverted to the claim of the writ petitioner in his counter affidavit to which reference has already been made by me in the earlier part of this judgment. If this review

petitioner apprehends that his rights are likely to be affected adversely in the event of appointment of the writ petitioner, he will not be left without any remedy. In my view petitioner is not entitled to invoke the review jurisdiction under any circumstances.

15. In K. Ajit Babu & Ors. v. Union of India & Ors. (1997) 6 SCC 473, their Lordships of the Supreme Court have held that “ordinarily the right of review is available only to those who are party to a case”. It is trite that right of review is not akin to a right of appeal. The right of review is circumscribed by the limitations prescribed in Order XLVII of the Code of Civil Procedure.

16. Having perused the entire materials on record I am persuaded to accept the contention raised by the writ petitioner that there is collusion between this review petitioner and the manager. Anyhow, I do not propose to deal with that aspect of the issue any further, since in my view even on merits the review petitioner is not entitled to get any relief.

Having regard to the totality of circumstances I am satisfied that the two review petitions are liable to be dismissed. I do so.

A.K. Basheer
Judge.

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